ly to make a mistake. Their standing is so high that their word is to be trusted so much so that a notice of default given by a bank or a broker must be honoured'.

Raja Azlan Shah CJ (Malaya), as he then was, in the Federal Court case of *Citibank NA* v *Ooi Boon Leong & Ors*[3] had concluded his judgment by saying, with particular reference to both the *Dobbs*'[1] and *Bache*'s[2] cases, as follows:

> That brings us to the important question whether the assistant registrar was entitled to deal with the case under the RSC O14 procedure. We have often said in this court many a time that where all the issues are clear and the matter of substance can be decided once and for all without going to trial there is no reason why the assistant registrar or the judge in chambers, or, for that matter this court, shall not deal with the whole matter under the RSC O14 procedure. In the present case the guarantee contains a clause which enables the bank by producing a certificate of indebtedness by its officer to dispense with legal proof of the actual indebtedness of the respondents. Clause 19 provides thus 'a certificate by an officer of the bank as to the money and liabilities for the time being due or incurred to the bank from or by the customer shall be conclusive evidence in any legal proceedings against us or any one of us or our personal representatives'. It means that, for the purpose of fixing liability of the respondents, the company's indebtedness may be ascertained conclusively by a certificate.
>
> In the circumstances the respondents are bound under cl 19 to accept the certificate of indebtedness duly executed by the assistant vice president of the branch as conclusive evidence of the debt due to the bank. On this footing the bank would be entitled to judgment as prayed for.

As gathered from the pleadings and affidavit evidence, the court has also been able to construe the letter of guarantee in its surrounding circumstances. In particular, the affidavit of the branch manager of the plaintiffs, encl 3, dated 22 January 1987 had stated that the plaintiffs had made a demand by letter dated 14 April 1986 and through their solicitors by letter dated 16 May 1986. The same deponent had also by affidavit dated 30 April 1987, encl 7, given the detailed calculations of the judgment debt. By encl 17, the same deponent had attached as exh 'AB1-1' the certificate dated 7 January 1988 as to the amount of money owing to the plaintiffs by the defendants as at 30 September 1986.

In their statement of defence filed on 21 February 1987, the defendants had admitted that they acted as guarantors for EWP up to $759,500 by virtue of the letter of guarantee dated 23 February 1982 but denied they owed the plaintiffs the $1,460,431.94 as at 30 September 1986 as the plaintiffs had not satisfactorily accounted for moneys paid and had not given satisfactory accounts of amounts due. They admitted receiving the notice of demand but denied they were jointly and severally liable on the said loan facilities and that they had agreed to be the principal debtors for all amounts loaned to EWP.

The defendants are at liberty to show cause against an application under O 14 by either showing technical grounds or on grounds of merits, namely, by showing that they have a good defence to the claim, that a difficult point of law is involved, that there is a dispute as to the facts which ought to be tried or any other circumstances showing a reasonable bona fide defence. None has been shown in this case and the court is of the view that the so-called triable issues raised are not actually triable issues when considered with the terms in the letter of guarantee and the relevant case authorities. Since there is no real substantial question to be tried and no dispute as to the facts or law which raises a reasonable doubt that the plaintiffs are entitled to judgment, the court holds that no leave to defend ought to be given to the defendants.

In the event, the court concurs with the finding of the learned senior assistant registrar and dismisses the appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co*; *Maxwell Kenion Cowdy & Jones.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Manoharan a/l Ratnasamy

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL TRIAL NO 52 OF 1985
KC VOHRAH J
3 DECEMBER 1988

Criminal Law – Dangerous drugs – Trafficking on own behalf – Agreement to sell 'ganja' – Agent provocateurs – Informers – Defence of no knowledge – Whether defence story raises reasonable doubt – Dangerous Drugs Act 1952, s 39B(1)

The accused agreed to sell about 700 rolls of 'ganja' to one Kanansamurthi ('Murthi'), a police constable who acted as an agent provocateur. After the agreement had been reached the accused went into a building to fetch the 'ganja' and shortly later came back with a canvas bag and approached Murthi. Murthi then arrested him. In the bag were found 680 rolls of 'ganja' wrapped in two pieces of newspaper. The 680 rolls of 'ganja' were, on analysis by a government chemist, found to be 'cannabis' within the meaning of the word under s 2 of the Dangerous Drugs Act 1952. The cannabis weighed 277.60 gm. The defence story was that while the accused had the canvas bag with him he did not know what its contents were. He said he had fetched the bag from the rooftop of a building at the request of a friend who was shorter than him.

Held, convicting the accused:

The defence has not created any reasonable doubt on the prosecution's case that the accused agreed to sell cannabis to

Murthi and that he was carrying the cannabis for delivery to the latter when he was arrested, acts which constitute trafficking in a dangerous drug, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952. The accused is therefore guilty of the offence for which he is charged and was convicted.

Case referred to
1 *Munusamy* v *PP* [1987] 1 MLJ 492 (refd)

Legislation referred to
Dangerous Drugs Act 1952 ss 2, 33, 39(B)(1)(a), (c), 39(B)(2), 40(1), 40A

Ahmad Rosli bin Mohd Sham (Deputy Public Prosecutor) for the Public Prosecutor.
SK Puvan for the accused.

Cur Adv Vult

KC Vohrah J: The accused was charged as follows:

> That you on 25 January 1985 at about 3.15 pm at Batu 2½ Jalan Cheras, in the city of Kuala Lumpur in the Federal Territory, did traffic in dangerous drugs, to wit, 680 rolls of cannabis weighing 277.60 grammes on your own behalf, and that you have thereby contravened the provisions of paragraph (a) of subsection (1) of section 39B of the Dangerous Drugs Act 1952, punishable under subsection (2) of the same section 39B of the same Act.

The prosecution's case was that the accused agreed to sell about 700 rolls of 'ganja' to one Kanansamurthi ('Murthi'), a police constable who acted as an agent provocateur. After the agreement had been reached the accused went into a building to fetch the 'ganja' and shortly later came back with a canvas bag and approached Murthi. Murthi then arrested him. In the bag were found 680 rolls of 'ganja' wrapped in two pieces of newspaper. The 680 rolls of 'ganja' were, on analysis by a government chemist, found to be 'cannabis' within the meaning of the word under s 2 of the Dangerous Drugs Act 1952 ('the Act'). The cannabis weighed 277.60 gm.

Murthi, PW3, stated that on 24 January 1985 he went to a restaurant with two Chinese men. This restaurant was on the ground floor of a multi-storey building of shophouses at 2½ milestone, Cheras. On arrival at this restaurant at about 10 pm the two Chinese men introduced him to the accused saying that Murthi could buy drugs from the accused. Murthi used a false name. After the introduction, Murthi and the accused had a discussion in Tamil. The accused agreed to sell him 1,000 rolls at $2 each. Subsequently, however, the accused called off the deal and told Murthi to come the next day in the afternoon. Murthi then left the place with the two Chinese for the police headquarters. He told the two Chinese to meet him at the police headquarters at 2 pm the next day.

The next day, at about 3 pm, Murthi arrived at the same area in a taxi with the same two Chinese. He met with the accused in a lane which was beside the same building of shophouses. One of the Chinese told the accused in Malay, 'The deal was called off yesterday. Is it possible to buy it today?' The accused and Murthi had a discussion in Tamil. The accused agreed to sell to Murthi the drugs but said that he had only about 700 rolls as he had sold some off. The accused then told Murthi to wait and then walked off. Murthi said that he followed the accused without his knowledge and he saw him, somewhere towards the end of the building, walk into the entrance of one of two adjoining staircases there. He was about 15 feet away when he saw him go in. Murthi then waited at the spot for about two to three minutes. Subsequently the accused came down and the accused walked towards him. Murthi, too, approached the accused. The accused had a green canvas bag with him. Murthi then caught hold of him from the front in an embrace and identified himself as the police and called for help.

Murthi said that a few moments later Sgt Paiman (PW2) arrived and handcuffed the accused. Murthi took the canvas bag from the accused and handed it over to ASP Zakaria (PW1) who, he said, had by then arrived at the scene. He said the accused was searched by Paiman and then taken across the road to where the car of ASP Zakaria was parked and the bag was examined. He said the bag (P4) contained a newspaper package and the newspaper wrappings (P5AB) held 34 bundles of rolls. After that they left for Cheras Police Station and thence to the police headquarters.

As regards the arrest of the accused, Sgt Paiman (PW2), who was at a Caltex petrol station at the northside of the building, confirmed that he saw that Murthi had caught hold of the accused in a tight embrace. He said the accused was struggling to free himself and he rushed towards Murthi to give him assistance. He then handcuffed the hands of the accused. Paiman said that while he saw Murthi on the five-foot way of the building before the arrest of the accused, he did not see the accused before his arrest.

ASP Zakaria (PW1) stated that he went to the area of the building with a party of nine excluding Constable Murthi. The party arrived there at about 2.50 pm. He said he and DPC Asri stationed themselves opposite the building across the road beside his car while Paiman and one other were at the Caltex petrol station and the five others were at the back of the building. He stated that 'five to ten minutes or more' after he had taken his position he saw Murthi at the five-foot way of the shophouses and a few minutes later he saw a male Indian walk along the five-foot way with a bag slung over his right shoulder. He then saw Murthi catch hold of this man, the accused, in a tight embrace and he (ASP Zakaria) ran across the road. He saw Paiman handcuff the accused. He said that Murthi then handed him the bag (P4). He took the accused, escorted by Paiman and Murthi, to the

car where he examined the bag in their presence. He found a newspaper package which contained 34 bundles of rolls of ganja. When he counted them later in his office he found that there were 680 rolls (P6).

From the scene they left for Cheras Police Station and thence to the police headquarters.

PW4, the investigating officer, stated that he received the canvas bag and its contents from ASP Zakaria and he then sent them in an envelope, sealed properly with the police seal, to the government chemist. He received the envelope this time sealed with the chemist seal and he identified all the exhibits withdrawn from it in court as the exhibits handed to him by ASP Zakaria. The chemist report (P9) by the government chemist showed that the 680 rolls contained a total of 277.60 gm (nett) of plant material which was 'cannabis' as defined in s 2 of the Act.

In the course of the trial a question arose as to whether the two Chinese men who accompanied Murthi on the two occasions to meet with the accused were agent provocateurs.

Murthi, it will be remembered, stated that on 24 January 1985 the two men introduced him to the accused and that on 25 January 1985, the day that the accused was arrested, they accompanied him for his appointed meeting with the accused. He called the two Chinese men 'informers'. Defence counsel requested for the disclosure of their names. The DPP objected to the disclosure, relying on s 40(1) of the Act which states, inter alia, that no witness shall be obliged or permitted to disclose the name and address of any informer or state any matter which might lead to his discovery. He also relied on *Munusamy* v *PP*[1] where the Supreme Court held that in that case in regard to the non-calling of the informer, the protection of s 40(1) of the Act clearly applied since the evidence showed that all the informer did was to accompany the police and introduce him to the appellant. Defence counsel, however, argued that in the present case the conduct of the two Chinese men showed that they were agent provocateurs.

While the Dangerous Drugs Act 1952 does not define what an 'informer' or an 'agent provocateur' is, nevertheless it does recognize the distinction between the two by providing on the one hand, under s 40, protection against disclosure of the identity of an informer and by providing, on the other hand, under s 40A, that no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

Ex facie, it seems clear from the evidence of Murthi, especially his evidence adduced during cross-examination, that the two men were agent provocateurs, not merely informers.

In *Munusamy*[1] this is what Azmi SCJ said at p 494:

> Mr Gurubachan Singh has also referred to us the judgment of Anuar J in *PP* v *Neoh Seow Aun* (Perak Criminal Trial No 12 of 1985). There, one of the three grounds of acquittal was that the two informers who had taken very active part in the commission of the offence by the accused were not called or offered to the defence by the prosecution, and it was successfully argued that they were not in fact informers within the meaning of s 40(1) and as such the adverse inference under s 114(g) applied. The Public Prosecutor's appeal against acquittal was eventually withdrawn. In our opinion whether a person is an informer or has become an active agent provocateur would depend on the facts of each particular case. In the instant case the protection under s 40(1) clearly applies since the evidence showed that all the informers did was to accompany DPC Lian on the 14th and introduce him to the appellant. Accordingly there is no merit in the argument that the learned judge ought to have invoked the adverse presumption under s 114(g).

In the present case, ex facie, the two Chinese men acting in concert with Murthi and knowing the criminality of the act of buying or selling a dangerous drug, introduced Murthi to the accused on 24 January 1985 as a would-be purchaser of cannabis from the latter and there would have been a concluded deal between Murthi and the accused for 1,000 rolls of cannabis at $2 each but for the fact that the accused suddenly called off the deal. And at the second meeting on 25 January 1985 with Murthi and the accused, the two Chinese men, again acting in concert with Murthi, by their presence and the representation by one of the Chinese men to the accused to the effect that there was to be a purchase of cannabis from him that day, induced the accused to agree to sell a dangerous drug to Murthi. And as Murthi stated in his evidence, the two men were part of his team; they disappeared after the arrest of the accused 'because they had played their part and they were of no further use'. But for the fact that the two Chinese acted as agents for agent provocateur Murthi, they could, conceivably, have been charged for doing acts preparatory to the trafficking in a dangerous drug, an offence under s 39(B)(1)(c) of the Act or for an offence of abetment of the commission of such an offence under s 33 of the Act. Their acts were not acts of mere informers but of agent provocateurs, and like Murthi, the protection afforded to informers under s 40(1) of the Act does not apply to them. These two Chinese men were eventually, at the close of the prosecution case, made available to the accused.

The thrust of the questions directed at the prosecution witness was to show that while the accused had the canvas bag with him, he did not know what its contents were. The allegations were that he had merely fetched the bag from the fourth floor of the building as a favour for one 'Sentul' who together with one Krisnamurthi met with Murthi and the two Chinese. ASP Zakaria, who

only saw the accused just before his arrest, said he did not see or know about the accused before the arrest. Paiman said that he did not see the accused before his arrest by Murthi. Murthi denied the defence allegations. Murthi also denied that the deal on 24 January 1985 was called off because the accused was not a dealer of drugs.

ASP Zakaria and Murthi also denied that they assaulted the accused with a cane at Cheras Police Station and that they again assaulted him at the police headquarters. The evidence under cross-examination showed that three or four persons were arrested by ASP Zakaria's men, who had been stationed at the back of the building, for drug addiction and they were brought later to Cheras Police Station.

At the close of the prosecution case the primary facts, not inherently incredible, showed that the accused had on 25 January 1985 agreed to sell about 700 rolls of cannabis to Murthi and that he was carrying 680 rolls of cannabis for delivery to Murthi when he was arrested. These were acts which constitute trafficking in a dangerous drug, cannabis, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952. To my mind a prima facie case had been made out against the accused under s 39B(1)(a) of the Act.

The accused elected to give evidence on oath. He admitted carrying the bag, P6, while he was being arrested. But he denied knowledge of the cannabis in the bag. He said he had fetched the bag from the rooftop of a building at the request of a friend, one Sentul. Sentul was shorter than the accused and Sentul in making the request had stated he could not reach the bag which was on the rooftop.

The accused called three witnesses, Lewis s/o Soosai *alias* Sentul (DW3), Krishnamurthi *alias* Kundoo (DW2) and Kanagaraj (DW4).

In his evidence the accused said that on 25 January 1985 at about 2 pm he left home for a coffeeshop at a building which was nearby his house. There he had a drink. While at the coffeeshop one Kanna, who arrived on a motorcycle, joined him. A short while later two others, Deepa and Peter, also joined in for drinks. Then Deepa gave $5 to the accused and requested him to buy 'banana leaf' food from Peel Road. The accused borrowed Kanna's motorcycle to go there. As he was about to start the motorcycle, which was parked beside a tree by the side of the lane by the building, he heard someone behind him call out 'Ossie'. That was his nickname. He said it was Sentul who called him.

The accused said he turned his motorcycle and rode towards Sentul and he saw that there were two Chinese men and an Indian man with Sentul. At that time he also noticed that Kundoo (DW2) was there. He had seen him come out from the kampong behind the area. They were standing in the lane nearer the back of the building and he then asked Sentul why the latter had called him and he said that Sentul 'asked me to do a favour'. Sentul requested him 'to go up and bring a bag for me'. According to the accused, Sentul requested him to walk up the third staircase from the side of the lane and to go up right to the top, the rooftop of the top floor. The accused said that he asked Sentul, 'Why can't you go and take your bag?' and Sentul replied, 'Can't reach the bag.' According to the accused Sentul was shorter than he was. So the accused obliged Sentul and went to the place indicated by Sentul; he climbed to the rooftop and stood on a raised cement platform and saw a bag on the rooftop. He took the bag and hung it over his shoulder and went downstairs. He was arrested when he had taken two steps on the five-foot way. The accused said that he did not open the bag before he was arrested.

It will be remembered that the prosecution's evidence showed that on 24 January 1985 at about 10 pm the accused had, at a coffeeshop in the same building after PW3 had been introduced to him there, agreed to sell 1,000 rolls of ganja at $2 each to PW3 and that subsequently the accused called off the deal. It was put to PW3, however, that the accused was not a dealer. But in his evidence the accused denied the meeting on 24 January 1985; he said that at about 10 pm that day Sentul had come to his house to invite him out. They then both left in a taxi to 3½ miles Ulu Pudu where Sentul told him to get down near a public telephone booth saying he wanted to visit a friend; and Sentul then walked away returning a short while later. They subsequently went back to Cheras in a taxi after which he (the accused) went home straightaway.

The accused called Sentul to give evidence. Sentul, however, gave evidence that flatly contradicted the accused's evidence of the events relating to his arrest on 25 January 1985 and the accused's denial that he met the two Chinese and PW3 on the night of 24 January 1985. The accused also called Kanagaraj (DW3) who seemingly corroborated his evidence that shortly before his arrest he had been asked in a coffeeshop to buy 'banana leaf' food for Deepa and he then rode his motorcycle to the back of the lane beside the shop. His other witness, Kundoo (DW2) stated that he heard Sentul call out to the accused and that the accused walked up to Sentul and was requested by Sentul in the presence of an Indian man, two Chinese and himself, to fetch a bag.

In assessing the defence in the light of the totality of the evidence adduced in the case, let me first turn to the evidence of DW2, Kundoo. To my mind he did not witness the incident where Sentul allegedly requested the accused to fetch the bag. He had stated that he saw the accused on his motorcycle when Sentul called out to the accused, 'Come here.' He also stated that the accused

then parked his motorcycle and walked up to Sentul. The accused, however, clearly stated in his evidence that he heard Sentul call out to him 'Ossie' and then he rode his motorcycle up to Sentul. This was an obvious material discrepancy.

The accused, under cross-examination, was asked if he had objected or protested to Sentul's request to fetch the bag. He stated that he did not object, something that he would know as it was within his knowledge, but Kundoo said that the accused showed his displeasure to Sentul by saying to the effect, 'What, you can't take the thing yourself?' Then again Kundoo said that Sentul told the accused to go to 'the third floor' and 'from the third floor there is a rooftop (sic); he asked the accused to go and take the bag for him'. The evidence of the investigating officer, Inspector Raja Khalid (PW4), was that the building was a four-storey building and there were stairs leading up to the top of the building; the stairs were marked 'T' in the sketch plan (P2). According to Constable Murthi (PW3) there were twin staircases which went up the building; and these can be seen in photographs P10A, B, C and E. From these photographs and the sketch plan it is clear there were several of such twin staircases going up the building. In contrast to what Kundoo stated in evidence the accused said that Sentul told him to go up the rooftop of the third staircase from the side of the lane, ie the third staircase counting from the side of the lane where Sentul, the two Chinese, PW3 and the accused were standing. It is clear that when Kundoo (DW2) referred to the 'third floor' (and not the third staircase) he had obviously muffed his lines.

The obvious discrepancies and blunders in the evidence of Kundoo when compared with the evidence of the accused showed that Kundoo had memorized the highlights of a story without paying attention to vital details or without anticipating that these matters would be the subject of cross-examination. If he had actually seen the episode which the accused claimed had taken place in the lane that fateful day and if he had actually heard what was spoken by the relevant persons there, these matters would have been noticed and recalled without there being any material contradictions as compared with the evidence of the accused on the same matters. My view is that Kundoo did not witness the incident portrayed by the accused.

My view is that, in fact, the incident as portrayed by the accused did not take place. Let me go back to the evidence of Kundoo before examining the evidence of Kanagaraj and Sentul.

Kundoo had stated that a short while after the accused had left the lane to fetch the bag, PW3 followed him. When asked if Sentul tried to stop PW3, Kundoo said 'no'. That was strange behaviour on the part of Sentul! The clear implication of Kundoo's evidence was that Sentul was involved with the drugs. That too was the clear implication of the evidence of the accused. That PW3 followed the accused cannot be disputed as the accused had himself stated that he was arrested on the five-foot way of the building by PW3 after he had taken two steps after coming out from the building meaning that PW3 must have moved out of the lane. Would, if Sentul was involved with the drugs in the bag, have allowed PW3 to follow the accused as was stated by Kundoo and as was clear from the evidence? Surely Sentul would have reacted adversely but no, for according to Kundoo, Sentul did not try to stop Murthi; Sentul instead talked to the two Chinese.

Kanagaraj's story that the accused had borrowed his motorcycle may be true bearing in mind that Sentul's evidence was that the accused arrived at the scene on a motorcycle as the two Chinese were inquiring about him. But it is clear, however, from the evidence of Sentul which will be discussed shortly that it was a case of the accused arriving at the scene, not one of the accused about to take off on Kanagaraj's motorcycle to buy Indian food for Deepa as claimed by the accused (who said that then Sentul called out to him) and as claimed by Kanagaraj (who said that then the accused rode to the back of the lane).

Now, Sentul was the accused's witness but he demolished the accused's defence. He stated that on 25 January 1985 as he was going to a shop for a drink he saw two male Chinese and an Indian. They inquired of him whether he had seen 'Mano' (the accused); he replied he did not see him. At that time the accused arrived there on a motorcycle and 'so they talked to Mano' after which the accused then walked in front of a shop and he then saw that the Indian who was with the Chinese follow the accused. Subsequently he and four others including Kundoo (DW2) were arrested. And then he saw Mano being taken across the road. It will be seen that the story of Sentul flatly contradicted, in all material particulars, the accused's story. In fact Sentul's story bears out the story of the prosecution.

Even in respect of the incident of the previous night where the prosecution evidence showed that PW3, in the company of the two Chinese, had met with the accused in a restaurant, the evidence of Sentul, elicited under cross-examination, confirmed the meeting at the place. He said that he met with the accused at the restaurant, Jalan Cheras and the same two Chinese and Indian were with him. This again flatly contradicted the denial of the accused that there was such a meeting. The accused had stated that there was no such meeting but that on that night at 10 pm he had gone to Ulu Pudu at the request of Sentul who had come to his house. That Sentul and the accused had gone to Ulu Pudu was not denied by Sentul

who, however, said that from the restaurant, shortly after he had met with the accused in the company of the two Chinese and the Indian, and at the request of the accused, he and the accused left for Ulu Pudu to look for one Bala but to no avail.

Sentul's evidence was clear and unambiguous and supported the prosecution's story that the accused had a meeting with PW3 and the two Chinese not only on the afternoon of 25 January but also on the night of 24 January 1985. Though Sentul did not relate what passed in conversation between the accused and PW3 on both the occasions nevertheless it is clear that his evidence in respect of the episode on 25 January 1985 – that the accused, after a conversation with the two Chinese and the Indian, left the scene after which PW3 followed the accused – strengthens the prosecution's case that the accused left to fetch the bag of cannabis after striking a bargain with PW3.

As regards the meeting on the night of 24 January 1985 when Sentul met with the accused he saw him in the company of two Chinese and an Indian. It was only after that that they went to Ulu Pudu. To my mind the accused shifted the time frame of his visit to Ulu Pudu. He did visit Ulu Pudu but only after he had met with PW3 and the two Chinese.

One other matter. The accused complained that ASP Zakaria, PW3 and one other policeman assaulted him with a cane at Cheras Police Station and asked him to admit that the bag belonged to him. He said that they also asked him 'about some drugs'. He also said that four others were assaulted at Cheras Police Station. Kundoo, Sentul and Kanagaraj also complained of assaults at the Cheras Police Station though they did not specifically mention who assaulted them. The accused made another complaint about being assaulted at the police headquarters by Zakaria and PW3. ASP Zakaria and PW3 denied the allegations. The DPP did not cross-examine the accused and Kundoo on the allegations they made but, notwithstanding that, I have no reason to disbelieve ASP Zakaria and PW3 when they denied assaulting the accused or the three or four others. Even if the accused or the others were assaulted by other police personnel I cannot see how that detracts from the compelling evidence that before his arrest the accused had agreed to sell to PW3 the cannabis and that he was caught with a bag of cannabis which he was supposed to deliver to PW3.

The elaborate story of the accused going to buy 'banana leaf' food for Deepa on Kanna's motorcycle, he making a coincidental appearance by the lane for Sentul to call out to him, he being asked by Sentul to fetch a bag and he readily agreeing to do so, and his other story that on the night previous to the day of the arrest he did not meet with PW3 to sell drugs to him but had instead at the time in question, accompanied Sentul to Ulu Pudu, fly in the face of the evidence of PW3 and of Sentul that on both occasions the accused had met two Chinese men and an Indian man. The evidence of PW3 was that the accused had on 24 January 1985 agreed to sell him 1,000 rolls of cannabis at $2 each, but that the deal was suddenly called off by the accused; and that on 25 January in the afternoon the accused agreed to sell him about 700 rolls of cannabis and that he went to fetch the cannabis and that he was arrested after he had come down the stairs with a bag containing 680 rolls of cannabis. To my mind the evidence of Sentul was clear and unambiguous as was the evidence of PW3, and the defence has not created any reasonable doubt on the prosecution's case that the accused agreed to sell cannabis to PW3 and that he was carrying the cannabis for delivery to the latter when he was arrested, acts which constitute trafficking in a dangerous drug, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952.

The accused is therefore guilty of the offence for which he is charged. And I convict him.

Order accordingly.

Solicitors: *Puvan & Co.*

Reported by *Wong Kim Fatt*

Public Prosecutor v Chin Hock Aun

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY
CRIMINAL TRIAL NO 58-17-1986
KC VOHRAH J
13 OCTOBER 1988

Criminal Law – Dangerous drugs – 78.01 gm of heroin – Trafficking in – Drugs found on the person of accused – Police raided hotel room – Defence of being a victim of a frame-up – Whether any obligation on the police to give search list – Whether defence story raises a reasonable doubt – Dangerous Drugs Act 1952, s 39B(1)(a)

The accused was charged as follows:

'That you on 17 September 1985 at about 7.20 pm at Jalan Raja Bot, in the Federal Territory of Kuala Lumpur, did traffic in dangerous drugs, to wit, heroin weighing a total of 78.01 gm and you have thereby committed an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s 39B(2) of the same Act.'

Seven police personnel from the Klang police station went to Kuala Lumpur on the evening of 17 September 1985 in an operation at the 'Chow Kit' area. The accused was arrested at Jalan Raja Bot at about 7.20 pm that day by two of the police personnel, detective constables Shee and Chua. These two constables had kept watch on the accused from the time he came out of the market at about 7.05 pm at Jalan Raja Bot earlier that night. They saw him walk to a car parked along Lorong Hj Hussin Tiga and talk to someone inside it. They saw him then